



1 of over one hundred eighty (180) open, closed, and cancelled escrow files  
2 Respondents identified as possible short sale, double flip transactions; specifically:

- 3 i. Escrow Number 5261246: Disbursement Date: December 30, 2009; Buyers:  
4 D.V.S. and J.A.B.; Seller: D.J.; Lender Academy Mortgage Company;  
5 Address: 31516 North 19th Avenue, Phoenix, AZ 85085.

- 6 1. Respondents failed to follow the lender's instructions which stated:

7 *Any disbursements in excess of \$5,000 on the seller side*  
8 *of the HUD-1 that are not Lien related, as specified in*  
9 *the title commitment, or for normal closing costs, must be*  
10 *approved in writing by an officer of the Lender, which*  
11 *consent acknowledges the Lender's notification of such*  
12 *circumstance."*

- 13 2. The Final HUD-1 and Respondents' receipts and disbursement journal  
14 reflect \$329,239.89 as proceeds to the Seller. However, the funds were  
15 wired to Canty Law Escrow, an out of state attorney that is not a party  
16 to the escrow, without the required approval. The escrow file does not  
17 indicate that Respondents disclosed the actual payee to the Lender or  
18 provided a corrected Final HUD-1.

- 19 3. Respondents further failed to follow the lender's instructions which  
20 also stated:

21 *"You are not to close this loan if there are any*  
22 *irregularities or deficiencies in the Chain of Title, such*  
23 *as unexplained, noncontiguous transfers in the change of*  
24 *ownership, flipping patterns, or if the property changed*  
25 *hands within the past thirteen months and the subsequent*  
26 *mortgage represents an increase of over 25% of a*  
*previous mortgage made during that same period. If such*  
*circumstances exist you must notify the Lender*  
*immediately, and the closing may not occur without the*  
*express, written consent of an officer of the lender, which*  
*consent acknowledges notification of such*  
*circumstances."*

- 27 4. The title commitment reflects transfer of the property by warranty  
28 deed from the short sale sellers on February 3, 2009. In fact, the

1 escrow file contains three (3) warranty deeds, all conveying title on  
2 December 30, 2009, which should have alerted Respondents of  
3 flipping patterns. The file did not evidence Lender consent or approval  
4 that the sellers acquired title to the property within twelve (12)  
5 months;

6 5. Lender's instructions further state:

7 *You are not to close this loan if the seller has acquired*  
8 *title to the property within twelve (12) months of the date*  
9 *of the closing without the express, written consent from*  
10 *an Officer of Lender, which consent acknowledges*  
11 *lender's notification of such circumstances.*

12 6. The title commitment states that the last recorded instrument vesting  
13 title to the property is: "An instrument executed by J.A.W., Jr., and  
14 C.W., husband and wife, in favor of M.T., as Trustee of 31516 N. 19th  
15 Ave Trust Dated February 3rd, 2009, as 2009-116470 of Official  
16 Records." However, the commitment has been modified to incorrectly  
17 show the trustee as D.J. instead of M.T.

18 7. The file contained three warranty deeds that recorded on December 30,  
19 2009 and conveyed title from:

- 20 a. M.T. to J.A.W., Jr. and C.W., the short sale owners, dated  
21 December 29, 2009;
- 22 b. J.A.W., Jr. and C.W. to D.J., dated December 28, 2009; and
- 23 c. D.J. to D.B.S. and J.A.B., the end buyers, dated December 22,  
24 2009.

25 8. An unnumbered addendum to the purchase contract dated  
26 December 28, 2009 listing Derek Jarr as the seller states:

*Seller intends to obtain title to the property through a*  
*negotiated short sale with the previous owner and will*  
*pay off any underlying liens upon close of escrow for that*

1                   *transaction, This transaction is contingent upon the*  
2                   *successful close of escrow of the short sale transaction so*  
3                   *that the seller can convey clear title to the buyer.*

4                   *Addendum three (3), dated June 3, 2009, signed by M.T.*  
5                   *and the Buyers states that the Trustee has obtained clear*  
6                   *title to trust assets.*

- 7                   9. Clearly, Respondents possessed ample information to establish that the  
8                   “seller acquired title to the property within twelve (12) months of the  
9                   date of the closing” but the file did not evidence “written consent from  
10                  an Officer of Lender” as required by the Lender’s Instructions, which  
11                  also state:

12                   *You [Respondents] are authorized to record and disburse*  
13                   *funds when you are in a position to issue your extended*  
14                   *coverage ALTA Lenders policy of title insurance in the*  
15                   *amount of \$288,000.00, insuring the enclosed Deed of*  
16                   *Trust/Mortgage/Security Deed/Security Instrument to be*  
17                   *a First Lien or charge upon the real property described*  
18                   *therein, subject only to the following exceptions*  
19                   *contained in your commitment above numbered*  
20                   \_\_\_\_\_ *all taxes and assessments must be brought*  
21                   *current.*

- 22                  10. The Final HUD-1 and receipts and disbursement journal indicate that  
23                  Respondents paid the seller, D.J.. However, a wire receipt shows that  
24                  Respondents disbursed the proceeds to Canty Law Escrow, who is not  
25                  a party to the escrow. Examiners found no evidence of the payoffs in  
26                  the closed escrow file and it appears that Respondents relied on Canty  
                    Law Escrow to pay off the liens. Therefore, Respondents did not  
                    ensure first lien position.
11. Several short sale transactions, including purchases for cash,  
                    incorrectly list payment going to the seller that actually went to  
                    another party, unrelated to the transaction, indicating a serious internal  
                    control deficiency. They further demonstrate the lack of basic internal

1 routines and controls, which helped permit lender misrepresentation  
2 and create the appearance of lender fraud, including providing  
3 inaccurate HUD-1s to lenders.

4 ii. Escrow Number 5255265: Disbursement date: November 30, 2009; Buyers:  
5 D.P. and A.P.; Seller: V.M.; Lender: Academy Mortgage Company; Address:  
6 20016 North 8th Place, Phoenix, AZ 85024.

7 1. Respondents failed to fully comply the Lender's instructions which  
8 stated:

9 *You are not to close this loan if there are any*  
10 *irregularities or deficiencies in the Chain of Title, such*  
11 *as unexplained, noncontiguous transfers in the chain of*  
12 *ownership, flipping patterns, or if the property changed*  
13 *hands within the past thirteen months and the subsequent*  
14 *mortgage represents an increase of over 25% of a*  
*previous mortgage made during that same period. If*  
*such circumstances exist you must notify the Lender*  
*immediately, and the closing may not occur without the*  
*express, written consent of an officer of the lender, which*  
*consent acknowledges notification of such circumstance.*

15 2. The escrow file does not document that Respondents notified the  
16 Lender of the evidence found in the file of flipping patterns. Further,  
17 examiners did not find written consent of an officer of the lender, as  
18 required by the Lender's Instructions.

19 3. Lender's Instructions, which lists the Seller as M.T., as Trustee of  
20 20016 N. 8th Place Trust also states:

21 *You are not to close this loan if the seller has acquired*  
22 *title to the property within twelve (12) months of the date*  
23 *of the closing without the express, written consent from*  
*an Officer of Lender, which consent acknowledges*  
*lender's notification of such circumstance.*

24 4. The file contains a warranty deed, recorded November 19, 2009,  
25 conveying title from M.T., as Trustee of 20016 N 8th PL Trust, to the  
26 Seller. However, the file does not contain written consent from an

Officer of the Lender.

5. The title commitment requirements state: "5) Please record \_\_\_\_\_ deed from M.T. as Trustee of 20016 N. 8th PL Trust to V.M., an unmarried man. 6) Please record a warranty deed from V.M. to D.P. and A.P."

6. The Warranty Deed and Title Commitment evidence that the seller acquired title within twelve (12) months, as well as a flipping pattern. The file did not contain written consent by the lender that the Seller acquired title to the property within twelve (12) months.

iii. Escrow number: 5252314: Buyers: J.A.S. and R.A.S.; Seller: M.T., as Trustee of 11640 N. Tatum Blvd, Unit 2096 Trust dated 08/04/2009; Lender: Homeowners Financial Group USA, LLC; Address: 11640 North Tatum Boulevard, Unit 2096, Phoenix, AZ 85028.

1. Lender's General Closing Instructions state that Respondents are not to "close or fund this loan if you have knowledge of a concurrent or subsequent transaction which would transfer the subject property." However, on the title requirements page, a handwritten note states: "need to see side "A" docs to approve." The statement documents that Respondents knew of a concurrent or subsequent transaction occurring on the property.

2. Specific Closing Instructions state: "THIS LOAN MUST RECORD IN 1ST POSITION ON OR PRIOR TO THE DISBURSEMENT DATE NOTED ABOVE." However, file documentation is inadequate to ensure 1st lien position. Respondents apparently relied on The Canty Law Group, who is not a party to the escrow, to ensure payment of the lien.

1                   3.     In addition, the Final HUD-1 and the receipts and disbursement  
2                         journal shows the seller as listed above. However, the wire receipt  
3                         shows that the Company paid Canty Law Escrow, which is not a party  
4                         to the escrow, instead of the seller, without authorization notifying the  
5                         Lender of the change of payee.

6                   4.     Page 2 of the Specific Closing Instructions states that “[T]he Final  
7                         HUD-1 Settlement Statement must be completed at settlement and  
8                         must accurately reflect all receipts and disbursements indicated in  
9                         these closing instructions.” However, as noted above, Respondents  
10                        did not provide a HUD-1 that accurately reflects the payee—Canty  
11                        Law Escrow, which is a violation of the lender’s instructions.

12           iv.   Escrow number: 5262291: Disbursement dates: Final HUD-1 and page 1 of  
13                   Receipts and Disbursement Journal—12/17/09; Page 2 of Receipts and  
14                   Disbursement, Wire Transfer, and Wire Receipt—12/22/09; Buyers: Ran,  
15                   LLC; Seller: B.N.; None   Cash transaction (likely A/B side of A/B/C  
16                   transaction); Address: 747 W. Pierce Street, Phoenix, AZ 85007.

17                   1.     The HUD-1 shows Respondents disbursed to the listed seller—B.N. on  
18                         December 17, 2009. The receipts and disbursement journal reflects  
19                         disbursement to B.N. on December 22, 2009. However, the wire  
20                         transfer receipts show that on December 22, 2009 the funds were  
21                         wired to Done Deal Investments, which is not a party to the escrow.  
22                         The discrepancy demonstrates the lack internal routine and control  
23                         measures. Examiners did not find authorization to disburse to Done  
24                         Deal Investments in the escrow file.

25                   2.     The file contained a December 3, 2009 e-mail from P.P. of Green  
26                         Street Realty stating that: “This is one of our cash to cash deals. We

1 need to close on the first side ASAP so we can then open escrow and  
2 close on side B.” Clearly, Respondents were aware that this  
3 transaction was part of a double escrow, flip scheme. The B/C side of  
4 the transaction Ms. Pont refers to was not included on the list of short  
5 sale transactions Respondents provided to the examiners.

6 b. Respondents failed to notify each depositing buyer and seller of their right to earn  
7 interest on all monies deposited into the escrow account within three (3) business  
8 days of the receipt of funds and failed to document in the escrow file that notification  
9 was made within the required three (3) business days; specifically:

10 i. Although all of the sale transaction files included the disclosure, several files  
11 failed to document that the notice was provided within three (3) days;

12 c. Respondents failed to adequately disclose to the buyer and seller of a residential  
13 dwelling, not later than three (3) business days after receipt of funds, that monies  
14 deposited in an escrow account are not insured against loss from fraud or theft by this  
15 State, or the United States government and failed to document in the escrow file that  
16 notification was made within the required three (3) business days; specifically:

17 i. Although the sale transaction files included the disclosure, the disclosure was  
18 undated and therefore does not document that the notice was provided within  
19 three (3) days.

20 d. Respondents deviated from their filed and approved escrow rates twenty five (25)  
21 times, amounting to a total deviation of one thousand fifty nine dollars and twenty  
22 one cents (\$1,059.21), thereby failing to maintain an adequate internal control  
23 structure as prescribed by A.R.S. § 6-841; specifically:

24 i. Respondents undercharged escrow parties at least thirty thirteen (13) times,  
25 amounting to a deviation of two hundred thirty seven dollars and eleven cents  
26 (\$237.11); and



- ii. Respondents overcharged escrow parties at least twelve (12) times, amounting to a deviation of eight hundred twenty two dollars and ten cents (\$822.10);
- e. Respondents deviated from their escrow fees charged by failing to maintain documentation to substantiate escrow fees charged; specifically:
  - i. Respondents' files failed to contain documentation for additional work, overnight delivery or courier fees; and
  - ii. Respondents failed to document what work was performed and the amount of time spent to justify additional work charges, such as vendor receipts and logs.

4. These Findings of Fact shall also serve as Conclusions of Law.

#### **CONCLUSIONS OF LAW**

1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty to regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules, and regulations relating to escrow agents.

2. By the conduct set forth above in the Findings of Fact, Respondents violated the following:

- a. A.R.S. §§ 6-841(A) and (B) by failing to maintain an adequate internal control structure to ensure that persons employed by or associated with the escrow agent's business do not make significant errors or perpetuate significant irregularities or fraud without timely direction;
- b. A.R.S. § 6-841.01(A) by failing to fulfill their fiduciary duty;
- c. A.A.C. R20-4-702 by failing to maintain records to enable the Superintendent to reconstruct the details of each escrow transaction;
- d. A.R.S. §§ 6-834(D) and (F) and A.A.C. R20-4-702 by failing to notify each depositing buyer and seller of their right to earn interest on all monies deposited into the escrow account within three (3) business days of the receipt of funds and failed to document in the escrow file that notification was made within the required three (3)

1 business days;

2 e. A.R.S. § 6-841.03 by failing to adequately disclose to the buyer and seller of a  
3 residential dwelling, not later than three (3) business days after receipt of funds, that  
4 monies deposited in an escrow account are not insured against loss from fraud or theft  
5 by this State or the United States government and failed to document in the escrow  
6 file that notification was made within the required three (3) business days;

7 f. A.R.S. §§ 6-841(A) and 6-846.04(A) by deviating from their filed and approved  
8 escrow rates at least twenty five (25) times, amounting to a total deviation of one  
9 thousand fifty nine dollars and twenty one cents (\$1,059.21), and failing to maintain  
10 an adequate internal control structure; and

11 g. A.R.S. § 6-846.04(B) by deviating from their escrow fees charged and failing to  
12 maintain documentation to substantiate escrow fees charged;

13 3. Respondents have not conducted business in accordance with the law and violated  
14 Title 6, Chapter 7 and the rules relating to this chapter, which are grounds for license denial,  
15 suspension, or revocation pursuant to A.R.S. § 6-817(A)(2).

16 4. Respondents have made material misrepresentations or false statements to, or concealed  
17 any essential or material fact from, any person in the course of the escrow business, which are  
18 grounds for denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(5).

19 5. Respondents have failed to account properly for escrow property as required by the terms  
20 of the escrow, which are grounds for denial, suspension, or revocation pursuant to A.R.S.  
21 § 6-817(A)(7).

22 6. Respondents have disbursed monies in violation of escrow instructions, which are  
23 grounds for denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(11).

24 7. Respondents have not maintained an adequate internal control structure as prescribed by  
25 A.R.S. § 6-841, which are grounds for license denial, suspension, or revocation pursuant to A.R.S.  
26 § 6-817(A)(12).

8. Pursuant to A.R.S. § 6-846.04(B), Respondents must remit a penalty to the Superintendent in an amount equal to the total of the escrow rate deviation.

9. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-817; (4) an order to pay restitution of any fees earned in violation of A.R.S. §§ 6-801, *et seq.*, pursuant to A.R.S. §§ 6-131 and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents pursuant to A.R.S. §§ 6-123 and 6-131.

## ORDER

1. Sterling and Mr. Barbakoff shall immediately stop the violations set forth in the Findings of Fact and Conclusions of Law. Sterling and Mr. Barbakoff:

- a. Shall maintain an adequate internal control structure to ensure that persons employed by or associated with the escrow agent's business do not make significant errors or perpetuate significant irregularities or fraud without timely direction;
- b. Shall maintain strict compliance with Lender's Instructions;
- c. Shall fulfill their fiduciary duty;
- d. Shall maintain records to enable the Superintendent to reconstruct the details of each escrow transaction and shall document in the escrow files;
- e. Shall notify each depositing buyer or seller adequate notice of their right to earn interest on all monies deposited into the escrow account within three (3) business days after receipt of escrow monies and shall document in the escrow files that notification was made within the required three (3) business days;

• • •

- 1 f. Shall adequately disclose to the buyer and seller of a residential dwelling, not later  
2 than three (3) business days after receipt of funds, that monies deposited in an escrow  
3 account are not insured against loss from fraud or theft by this State or the United  
4 States government and shall document in the escrow files that notification was made  
5 within the required three (3) business days;
- 6 g. Shall not deviate from their filed and approved escrow rates and shall maintain an  
7 adequate internal control structure; and
- 8 h. Shall not deviate from their escrow fees charged and shall maintain documentation to  
9 substantiate escrow fees charged;
- 10 i. Shall obtain an independent audit of all suspected short sale, double escrow flip files  
11 processed since January 1, 2009, to determine the number and full extent of  
12 violations, and address the deficiencies therein. It must provide notice of the failure  
13 to comply with lender's instructions and provide corrected and accurate Final HUD-  
14 1s to affected lenders. The notice to lenders must address all discrepancies revealed  
15 by the audit including, but not limited to:
- 16 i. Disbursements of funds through escrow to parties unaffiliated with the  
17 transaction and not listed on the HUD-1 and Respondents' records,
- 18 ii. Non-disclosure of the ownership interest of service providers that are also a  
19 party to the escrow,
- 20 iii. Evidence of irregular and deficient Chains of Title and flipping patterns of  
21 escrow properties,
- 22 iv. Change of title within twelve (12) months.
- 23 j. Shall provide to the Superintendent the audit and documentation of lender notification  
24 within ninety (90) days after receipt of the Department's Report of Examination.
- 25 k. Shall implement internal routine and control measures that ensure HUD-1s, receipts  
26 and disbursement journals, and all records and reports are correct and accurate and

1 reflect the actual parties paid through escrow. Respondents must provide  
2 documentation that the control measures are instituted within ninety (90) days after  
3 receipt of the Department's Report of Examination.

4 2. Sterling and Mr. Barbakoff shall immediately reimburse all overcharges of \$5.00 and  
5 more, as described in the above Findings of Fact, paragraph 3(d), to the appropriate escrow parties  
6 and shall provide copies of the refund checks to the Superintendent, pursuant to A.R.S. §§ 6-131 and  
7 6-137.

8 3. Sterling and Mr. Barbakoff shall immediately pay to the Department a civil money  
9 penalty in the amount of **fifteen thousand dollars (\$15,000.00)**. Sterling and Mr. Barbakoff are  
10 jointly and severally liable for payment of the civil money penalty.

11 4. Sterling and Mr. Barbakoff shall immediately pay to the Superintendent a rate deviation  
12 penalty in the amount of **one thousand fifty nine dollars and twenty one cents (\$1,059.21)**, which  
13 is an amount equal to the total deviations, pursuant to A.R.S. § 6-846.04(B).

14 5. Sterling and Mr. Barbakoff shall immediately pay to the Department the examination fee  
15 in the amount of **eighteen thousand five hundred twenty five dollars (\$18,525.00)**, pursuant to  
16 A.R.S. § 6-125.

17 6. Sterling and Mr. Barbakoff shall comply with all Arizona statutes and rules regulating  
18 Arizona escrow agents (A.R.S. §§ 6-801 *et seq.*).

19 7. The provisions of this Order shall be binding upon Respondents, , their employees,  
20 agents, and other persons participating in the conduct of the affairs of Respondents.

21 8. This Order shall become effective upon service, and shall remain effective and  
22 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,  
23 or set aside.


24 ...

25 ...

26 ...

1 SO ORDERED this 26 day of August, 2010.

2 Lauren W. Kingry  
3 Superintendent of Financial Institutions

4 By   
5 Robert D. Charlton  
6 Assistant Superintendent of Financial Institutions

7 **CONSENT TO ENTRY OF ORDER**

8 1. Respondents acknowledge that they have been served with a copy of the foregoing  
9 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the  
10 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

11 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the  
12 foregoing Findings of Fact, Conclusions of Law, and Order.

13 3. Respondents state that no promise of any kind or nature has been made to induce them to  
14 consent to the entry of this Order, and that they have done so voluntarily.

15 4. Respondents agree to cease from engaging in the violative conduct set forth above in the  
16 Findings of Fact and Conclusions of Law.

17 5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent is  
18 solely to settle this matter and does not preclude this Department, any other agency or officer of this  
19 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the  
20 future.

21 6. Daniel B. Barbakoff, on behalf of Sterling Title Agency, LLC and himself, represents  
22 that he is the President and Managing Member, and that, as such, has been authorized by Sterling  
23 Title Agency, LLC to consent to the entry of this Order on its behalf.

24 7. Respondents waive all rights to seek judicial review or otherwise to challenge or contest  
25 the validity of this Order.

26 ...

1 DATED this 25 day of AUGUST, 2010.

2  
3 By 

4 Daniel B. Barbakoff, President and Managing Member  
Sterling Title Agency, LLC

5  
6 ORIGINAL of the foregoing filed this 26<sup>th</sup>  
7 day of August, 2010, in the office of:

8 Lauren W. Kingry  
9 Superintendent of Financial Institutions  
10 Arizona Department of Financial Institutions  
ATTN: Susan L. Longo  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

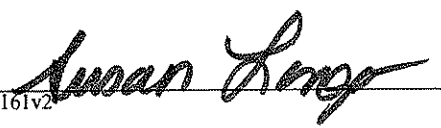
11 COPY mailed/delivered same date to:

12 Craig A. Raby, Assistant Attorney General  
13 Office of the Attorney General  
1275 West Washington  
Phoenix, AZ 85007

14 Robert D. Charlton, Assistant Superintendent  
15 Mack Wynegar, Senior Examiner  
Tom Fink, Senior Examiner  
16 Mike McGrane, Senior Examiner  
17 Arizona Department of Financial Institutions  
2910 North 44th Street, Suite 310  
Phoenix, AZ 85018

18 AND COPY MAILED SAME DATE by  
19 Certified Mail, Return Receipt Requested, to:

20 Daniel B. Barbakoff  
21 President and Managing Member  
Sterling Title Agency, LLC  
22 9220 E. Raintree Drive, Suite 103  
Scottsdale, AZ 85260  
Respondents

23  
24   
# 938161v2  
25  
26